

REMARKS

In the last Office Action, claims 2 and 4 were rejected under 35 U.S.C. §112, first paragraph, as failing to have support in the specification. It is submitted that page 8, lines 22-24 of the specification provide support for the embodiment of the invention recited in claims 2 and 4. Considering the level of ordinary skill of the art of ophthalmic surgery instruments, the artisan would well be able to adapt the principle embodiment of the invention described in the application to create the alternate embodiment of claims 2 and 4. It is therefore submitted that the application provides ample support for the embodiment of claims 2 and 4.

Despite being supported by the specification, claims 2 and 4 have been cancelled herein because their subject matter is being pursued in a continuation application. The cancellation of the claims should not be interpreted as acknowledging any merit of the rejection of the claims.

Claims 1-4 and 7-14 were rejected under 35 U.S.C. §103(a) as being obvious in view of the disclosure of the Loeb publication (2002-0193781) and the disclosure of the newly cited U.S. Patent of Colgan, et al. No. 6,648,902. Of the rejected claims, claims 1-4 have been cancelled, and claims 7-14 have been amended herein to depend from new independent claim 5, which was not included in the rejection of the claims. It is therefore submitted that the amendment of claims 7-14 to depend from independent claim 5 overcomes the basis for the rejection.

Claims 5, 6, 17, and 19-21 were rejected under 35 U.S.C. §103(a) as being obvious in view of the Loeb disclosure and the Colgan disclosure as applied to claim 1, and further in view of the disclosure of the U.S. Patent of Esch, et al. No. 5,469,524. It

is first pointed out that the rejection of the claims is based on an incorrect interpretation of the claim dependency. Claims 5 and 6 included in the rejection do depend from claim 1. However, claims 17 and 19-21 included in the rejection do not depend from claim 1. Therefore, the rejection of claims 17 and 19-21 is made in error and should be withdrawn.

Claim 5 has been amended into independent form herein incorporating all of the subject matter of claims 1, 3, and 4 into claim 5. Amended claim 5 recites a surgical instrument comprising a handle, a rigid sleeve that projects straight from the handle, an optic fiber that extends through the handle and the sleeve and has an adjustable bend in a distal end portion of the fiber, and the handle having a mechanism that is connected to the sleeve and selectively moves the sleeve between pushed forward and pulled back positions of the sleeve relative to the handle.

In contrast to the above, and as recognized in the rejection of claim 5, the Loeb reference fails to disclose the handle having a mechanism connected to the sleeve to move the sleeve. The Esch reference was relied on for this subject matter. However, the Esch reference does not disclose a rigid, straight sleeve that is connected to a handle mechanism for movement of the sleeve relative to the handle on movement of the mechanism relative to the handle. The Esch reference specifically teaches a sleeve 45 made of a flexible material so that it can be inserted into a curved instrument channel 59 of a typical endoscope 13 or other instrument (Esch, column 3, lines 39-41). Furthermore, the Esch reference specifically requires that in order to provide the sleeve with its required flexibility, the material that is chosen for the sleeve is necessarily

relatively soft, "certainly much softer than would be a rigid metal sleeve" (Esch, column 3, lines 50-53).

Thus, the Esch reference teaches specifically away from the construction of the surgical instrument recited in amended claim 5. In view of this, the combined teachings of the Loeb, Colgan, and Esch references would not render obvious the subject matter of amended claim 5 to the ordinary skilled artisan. Claim 5 is therefore allowable, and claims 6-14 and 27-32 that all depend from claim 5 are also allowable.

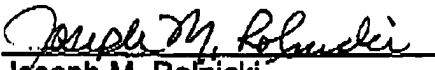
Amended independent claim 20, like amended independent claim 5 requires that the sleeve be a rigid tube that projects from the handle. This is in contrast to the soft, flexible tube taught by the Esch reference. For the same reasons discussed above with regard to amended independent claim 5, the subject matter of amended independent claim 20 is not made obvious in view of the Loeb, Colgan, and Esch references. Claim 20 and claim 21 are therefore allowable over the prior art of record.

Claims 15, 16, 18, and 22-26 were rejected as being obvious under 35 U.S.C. §103(a) in view of the disclosure of the Esch and Colgan references. Of these rejected claims, claims 15 and 16 have been cancelled, and claims 18 and 22-26 have been amended to depend from new independent claim 20. New independent claim 20 was not included in the rejection in view of the Esch and Colgan references. This acknowledges that the subject matter of independent claim 20 is not obvious in view of the combined teachings of the Esch and Colgan references. Because claims 18 and 22-26 all depend from new independent claim 20, these claims are also allowable over the prior art of record.

It is respectfully submitted that in view of the amendments and remarks presented herein, the application is in condition for allowance and favorable action is requested.

Respectfully submitted,

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